

FACT SHEET

MARCH 1999

Brownfields Redevelopment

What are "Brownfields"?

Brownfields are abandoned or inactive industrial sites potentially contaminated with pollutants. Brownfields are typically situated in urban areas near utilities, highways, railways and inexpensive labor pools. Estimates show there may be as many as 450,000 Brownfield sites across the country. However, developers have been reluctant to utilize these sites because of the potential liability involved with environmental contamination of the sites.

Actual or perceived environmental contamination complicates the redevelopment of these sites. Most banks are not willing to finance redevelopment of these sites because, if the site is environmentally contaminated, they could be held liable for cleanup costs under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), commonly known as "Superfund." Even if a developer is interested in using a Brownfield site, it may be difficult due to lack of financial support. As a consequence of these complications, new projects are developed in "greenfields" (undeveloped farmlands or woodlands in outlying areas) resulting in urban sprawl.

Why is Brownfield Redevelopment Important?

The redevelopment of inactive industrial sites has many benefits including:

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- creating new employment opportunities;
- increasing local revenue; and
- revitalizing urban areas.

This helps to curtail the decline of inner city areas while reducing urban sprawl. Also, Brownfield sites are often considered "eyesores" and the overall appearance of an area can be improved through redevelopment of these sites. Brownfield redevelopment also serves to protect greenfields from development pressures.

What are the Obstacles to Brownfield Redevelopment?

The major obstacle to redevelopment of Brownfields is the presence or perceived presence of environmental contamination. Prospective developers are concerned that they will be held liable for the costs associated with environmental cleanup under CERCLA.

Section 107 of CERCLA imposes liability for response costs associated with environmental cleanup of contaminated sites on four classes of persons: owners, operators, generators, and transporters. Those facing liability for response costs under CERCLA include present owners or operators of a facility, even if they did not contaminate the site. The term "owner" includes a bank that takes possession of an environmentally contaminated site through foreclosure on its security interest in property as well as purchase of land at a

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foreclosure sale (Section 101 (20)). As a result of the potential liability, developers maybe hesitant to utilize a Brownfield site and banks may be reluctant to provide funds for this type of development.

EPA Encourages Brownfield Redevelopment

The Brownfields Initiative (January 1995) is a Federal program administered by the U.S. Environmental Protection Agency (EPA) to encourage the use of Brownfield sites. It empowers States, communities, and other stakeholders in economic redevelopment to reutilize Brownfield sites. This initiative helps preserve prime farmland, forests and open areas from development while encouraging the use of pre-existing roads, sewers, water lines and utilities.

EPA has ongoing and planned activities to help States and localities implement the Brownfields Initiative covering four broad categories: 1) Brownfield pilots, 2) Clarification of liability and cleanup issues, 3) Partnerships and outreach, and 4) Job development and training.

1) Brownfield Pilots

By the end of 1998, EPA has awarded 227 Brownfield Assessment Pilots. EPA plans to select additional assessment pilots in 1999 to reach the goal of 300 Brownfields Assessment Pilots. GSA has participated in the selection process since 1997. Selected sites are funded up to \$200,000 over a two-year period as an incentive for redevelopment. The money awarded to these projects is designated to be used for site assessments and related activities excluding the actual site cleanup. These pilots will test redevelopment models, examine the removal of regulatory barriers, and improve the coordination of public and private efforts at the Federal, State, and local levels. The knowledge gained from these pilot sites will be used by EPA to improve the Brownfields Initiative.

The sites selected as Brownfield Pilots are reviewed by an evaluation committee composed of EPA regional and Headquarters staff, GSA, and representatives from other Federal Agencies. This panel reviews each application and compares it to a set of criteria including:

- ✓ *the impact of the Brownfield site on the community;*
- ✓ *how EPA funding will be utilized;*
- ✓ *level of local commitment;*
- ✓ *plans for ensuring continued community involvement;*
- ✓ *plans for public education and participation;*
- ✓ *environmental justice;*
- ✓ *evidence of support from state and local agencies;*
- ✓ *plans to complete an environmental assessment of the site;*
- ✓ *potential sources of funds for cleanup activities;*
- ✓ *applicability of this plan nationwide; and*
- ✓ *measures of success.*

The merits for each proposal are discussed in consideration with additional factors such as the diversity of assessment pilots to serve as models for communities nationwide. The panel forwards the favored site applications to the Assistant Administrator of EPA's Office of Solid Waste and Emergency Response, who makes the final selection.

2) Clarification of Liability and Cleanup Issues

EPA is developing and issuing guidance documents to clarify the liability of prospective purchasers, lenders, property owners, and others associated with Brownfield sites. Revised guidance on EPA's "Prospective Purchaser Agreements" will expand the circumstances under which EPA agrees not to file lawsuits against purchasers of contaminated property for preexisting contamination at the site.

EPA issued a general policy statement not to sue landowners for groundwater contamination on their property resulting from activities on a neighboring property. EPA has also issued guidance on Superfund and Underground Storage Tank lender liability indicating that EPA will not pursue lenders for cleanup costs. Additionally, EPA has "archived" more than 27,000 of the 40,000 sites on its inventory of partially contaminated sites (the Comprehensive Environmental Response, Compensation and Liability Information System, or CERCLIS). These were potential hazardous waste sites that were listed on CERCLIS, investigated and found not to qualify for EPA's National Priorities List (NPL), and EPA subsequently classified as "No Further Remedial Action Planned" (NFRAP) sites.

This action will reduce the fear of liability by clarifying that the EPA will not pursue any further actions under Superfund at these sites. However, site developers such as GSA would need to clarify liability with states, which often have site cleanup

initiatives similar to EPA's Superfund program (also see "State Voluntary Cleanup Programs" below).

3) Partnerships and Outreach

EPA is forming partnerships with States, cities, communities, and Federal agencies to develop strategies for promoting public participation and community involvement in the Brownfields decision making process. To date, EPA has formed six such memorandums of understanding (MOU) with Federal agencies. These agencies are the Department of Labor, Employment and Training Administration; the Department of Interior, National Park Service; the Department of Housing and Urban Development; the Department of Commerce, Economic Development Administration and the National Oceanic and Atmospheric Administration (NOAA); and GSA.

4) Job Development and Training

EPA is working with the local community and colleges to develop long-term plans for workforce development through worker training, recruitment of students from socio-economically disadvantaged communities, environmental education, and providing local residents an opportunity to apply for jobs developed as a result of Brownfield efforts. In July 1998, EPA awarded 11 Job Training and Development Demonstration Pilots and expects to award up to 10 Job Training Pilot grants in fiscal year 1999.

EPA Issues "Comfort Letters"

If parties are interested in utilizing a Brownfield site, they may contact their EPA Regional Office for information on the sites environmental contamination and the risks and liabilities associated with the site. EPA has developed "comfort letters" to be issued to potential buyers of Brownfield sites. These letters inform the buyer of site specific information and potential Superfund liability. EPA has suggested 4 different types of sample letters to be used by the regions:

"No Previous Federal Superfund Interest Letter" - where there is no historical evidence of Superfund concern at the site.

"No Current Federal Superfund Interest Letter" - to be used for sites EPA has deleted from the National Priorities List (NPL) or that EPA no longer includes on its list of potential Superfund sites (NFRAP sites).

"Federal Interest Letter" - used to indicate a higher risk site, because EPA anticipates, or has already begun a response at the site; and

"State Action Letter" - this indicates that the state has assumed response action at the site.

EPA emphasizes these letters provide information for the potential buyer to develop their own opinion on the risk of Superfund liability associated with a site. The comfort letters do not indicate a release from Superfund liability. The letters will be issued by the EPA regional office in response to direct requests from interested parties.

State Voluntary Cleanup Programs

Some states have developed voluntary cleanup programs that encourage the redevelopment of Brownfield sites by streamlining the process and providing protection from liability. These programs vary from state to state but share similar characteristics. Generally, they include a process to determine cleanup needed at a Brownfield site, and a release from future liability at the site or a promise from the state not to file suit once the agreed upon cleanup is complete. This type of program provides adequate assurance there will be no unexpected developer liability for site cleanup at a later date.

However, state Brownfields or voluntary cleanup programs cannot offer a release from Federal liability. In response to this, EPA is supporting effective State cleanup programs by entering into memorandums of agreement (MOA) with the States. The MOAs define a division of labor between EPA and a State, and relate the EPA's intended treatment of sites participating in a Voluntary Cleanup Program covered by a MOA. Forty-four states have established voluntary cleanup programs. Only the District of Columbia, Kentucky, Louisiana, North Dakota, South Dakota, Vermont, and Wyoming do not currently have voluntary cleanup programs. However, South Dakota and Vermont allow private parties to initiate voluntary cleanups. In addition, Louisiana has a program framework established but has not yet started accepting sites, Vermont has a brownfields

program that allows for certain types of voluntary cleanups, and Kentucky is in the process of developing guidelines for a voluntary cleanup program. EPA has MOAs with Colorado, Delaware, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri, Rhode Island, Texas, and Wisconsin and is still negotiating MOAs with additional states.

Other Issues Related to Brownfield Development

Pollution Prevention and Environmental Justice are closely related to Brownfield development.

The Pollution Prevention Act of 1990 states whenever feasible, pollution should be prevented or reduced at the source and pollution which cannot be prevented should be recycled or treated in an environmentally safe manner, with disposal or other release into the environment being employed only as a last resort. Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements," provides additional guidance by declaring each Federal agency responsible for ensuring all necessary actions are taken to prevent pollution by agency activities and facilities. Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition" continues this requirement.

Pollution prevention activities encourage the development of more efficient manufacturing practices, which generate less pollution and result in lower pollution-control costs. Brownfield redevelopment projects should utilize pollution prevention practices to reduce manufacturing costs while promoting cleaner and more efficient site redevelopment.

Environmental justice issues play a role in Brownfield development because most Brownfield sites are located in older urban areas housing minority or low-income populations. These communities welcome redevelopment as a source of new jobs and a revitalized urban environment. However, redevelopment must proceed in a manner that does not compromise the environmental health of local residents. Each Brownfield Pilot must have an environmental justice and community involvement plan.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," states that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

The Brownfields National Partnership

On May 13, 1997, Vice President Al Gore announced the Brownfields National Partnership Action Agenda outlining EPA's activities and future plans to help States and Communities implement and realize the benefits of the Brownfields Initiative. This agenda outlines several major government programs that have been established, including 10 Brownfields Showcase Communities; and millions of dollars in investment money from The Department of Housing and Urban Development, The Economic Development Administration, The Department of Transportation, GSA, the National Oceanic and Atmospheric Administration, The Department of Health and Human Services, and the Department of Energy to support the redevelopment of Brownfields. The agenda states the importance of coordination among all levels of government, the private sector, and non-government organizations to link environmental protection with economic development and community revitalization.

The Brownfields National Partnership Action Agenda is based on the principle that contaminated properties can be assessed, cleaned up and put back into productive use. By linking environmental protection with economic development and community revitalization, a sustainable redevelopment program can be put in place that meets the needs of communities by bringing public and private organizations together to solve the problems associated with environmental contamination and viable reuse of property. The action agenda provides an outline of strategies for Brownfields redevelopment. It also lists specific actions to be taken and identifies the agency responsible for implementation of each action. These activities are grouped into four phases of the Brownfields Redevelopment process. These phases are: Community Planning, Assessment and Cleanup, Redevelopment Support, and Sustainable Reuse.

GSA's Brownfields Redevelopment Initiative

As landlord and holder of real estate for the Federal government, GSA recognizes the importance of property as a catalyst for positive change in urban areas. Property use can shape how people live and work, and can serve as both an income base and a provider of jobs. Federal property is woven into the fabric of the nation's urban centers, and its potential should be maximized to provide the best service to the community. To do so, GSA has committed to review and identify underutilized Federal properties under its Brownfields Redevelopment Initiative.

In March 1997, GSA selected 14 cities, plus the Territory of Puerto Rico and the Everglades Regions, to serve as project locations under the Brownfields Redevelopment Initiative. In 1998, 23 additional locations were added, for a total of 39. GSA has entered into a dialogue with local planners, economic development officials, and environmental groups from each of the project locations to learn if local redevelopment efforts may be bolstered by the inclusion of surplus Federal holdings.

GSA has been able to integrate various information sources from the Federal, state, and local levels, incorporating data on surrounding land uses, market indicators, environmentally impacted properties, and demographics. The result is a relatively detailed profile of each project location, allowing both GSA and the locality to quickly and effectively determine which underutilized Federal properties may best serve local redevelopment objectives.

Resources Available to Support the National Brownfields Partnership:

1) Community Planning

GSA is committed to ongoing dialogues with communities to determine how underutilized Federal properties may aid local redevelopment activities. GSA embraces a redevelopment philosophy that encourages that local efforts are included.

2) Effective Partnering

GSA actively engages its federal and state partners, fostering ongoing collaboration and information exchange on brownfields-related matters. GSA also ensures that other Federal

and state entities understand GSA's Brownfields Redevelopment Initiative, coordinates limited resources, reduces duplication of efforts, and brings additional insight to the project.

3) Environmental Assessment

GSA will provide \$1 million to fund environmental baseline surveys of federal property disposal candidates to expedite brownfields redevelopment. In addition, GSA has signed an MOU with EPA.

4) Sustainable Reuse

Under the Brownfields Redevelopment Initiative, GSA is committed to identifying underutilized federal properties to support urban revitalization efforts.

For More Information

For more information about Brownfield redevelopment, please contact NEPA Call-In at (202) 208-6228, GSA's Brownfields website at www.bri.gsa.gov/brownfields, or EPA's website at www.epa.gov/brownfields. GSA's point of contact on Brownfields issues is Mr. John Q. Martin, Public Buildings Service, Office of Property Disposal, (202) 501-0052.

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EPA Regional Brownfields Contacts

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